
Federal Communications Commission

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of

Jack Gerritsen

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File Number EB-04-LA-292

NAL/Acct. No.200532900006
FRN 0005240072

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Released: January 21, 2005

By the District Director, Los Angeles District Office, Western Region, Enforcement Bureau:

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture ("NAL"), we find that Jack Gerritsen ("Gerritsen") apparently willfully violated Sections 321(b) and 333 of the Communications Act of 1934, as amended, ("Act") by willfully and maliciously interfering with the radio communications of a Coast Guard Auxiliary Officer while he attempted to use the amateur frequencies to contact a sailing vessel in distress.¹ We conclude, pursuant to Section 503(b) of the Communications Act of 1934, as amended ("Act"),² that Gerritsen is apparently liable for a forfeiture in the amount of twenty-one thousand dollars (\$21,000).

II. BACKGROUND

2. On November 14, 2001, the Commission's Wireless Telecommunications Bureau set aside, on its own motion, amateur radio station license "KG6IRO," which was granted to Gerritsen on November 7, 2001.³ Gerritsen was warned that "you have no authority to operate radio transmitting equipment, and such operation would be a violation of Section 301 of the Communications Act of 1934, as amended, 47 U.S.C. Section 301, subjecting you to monetary penalties and imprisonment."⁴ On July 16, 2004, Gerritsen was warned by agents from the Commission's Los Angeles Office that he did not have authority to transmit on any amateur band and that he should vacate all amateur frequencies.

3. On October 29, 2004, at 11:25 AM, the Commission's Los Angeles Office received a

¹47 U.S.C. §§ 321(b), 333.

²47 U.S.C. § 503(b).

³See November 21, 2001, letter from W. Riley Hollingsworth, Special Counsel, Enforcement Bureau, Federal Communications Commission, to Mr. Jack Gerritsen ("Enforcement Bureau Letter"). The action was taken pursuant to Section 1.113(a) of the Rules which states that "within 30 days after public notice has been given of any action taken pursuant to delegated authority, the person, panel, or board taking the action may modify or set it aside on its own motion." 47 C.F.R. § 1.113(a).

⁴Enforcement Bureau Letter.

telephone call from a complainant stating that she had not been able to contact her husband on the sailing vessel ("S/V") *Elke-Marie* traveling from California to Guadalupe Island, Mexico. According to the complainant, the S/V *Elke-Marie* had been traveling with a companion vessel, the S/V *Drummoral*, and both had encountered a storm on the evening of October 25, 2004. The storm had damaged the S/V *Elke-Marie*, rendering the ship's VHF marine radio inoperable. The amateur radio was the only operational transmitter aboard the vessel as the S/V *Elke-Marie* turned around and sailed back towards Catalina Island. The complainant stated that when she contacted Coast Guard Los Angeles Group to report she had not heard from her husband in two days, the U.S. Coast Guard Operations Center contacted a U.S. Coast Guard Auxiliary Officer and requested that he attempt to contact the complainant's husband via amateur radio, to determine his need for assistance. Information received from the Coast Guard Auxiliary Officer ("Officer") indicated that, beginning at about 10:00 AM on October 29, 2004, the Officer came up on the Catalina Island Amateur Repeater Association ("CARA") repeater on Catalina Island, California, transmitting on 147.090/147.690 MHz, and requested that all stations stand by while he attempted to contact the S/V *Elke-Marie* on behalf of the Coast Guard.⁵ Shortly thereafter, according to the Officer and the complainant, Gerritsen began speaking and transmitting a prerecorded message using the CARA repeater. Throughout the transmissions, Gerritsen repeatedly announced his cancelled amateur call sign of "KG6IRO." The Officer announced that the channel was being used for emergency traffic. According to the Officer, each time he attempted to contact the S/V *Elke-Marie*, Gerritsen played a recording or questioned the validity of the emergency. When asked by the Officer to stand down, Gerritsen stated that he did not believe there was a real emergency and continued to transmit his messages. The Officer attempted to assure Gerritsen there was a real emergency only to be rebuffed by Gerritsen who accused the Officer of declaring a sham emergency in an attempt to "jam" his messages. Gerritsen continued transmitting for approximately 40 minutes, repeatedly playing a taped recording and ultimately ending his transmission by stating "If you jam me, I'll jam you."

4. On October 29, 2004 at approximately 11:35 AM, Los Angeles Office agents approached Gerritsen's residence at 6217 ½ Palm Avenue, Bell, California. The agents located the source of a signal on 147.690 MHz, the input frequency to the CARA repeater, to Gerritsen's residence. After several failed attempts, one of the agents called Gerritsen's residential telephone using his cellular telephone. The call was answered by someone in the residence who would not speak. The Los Angeles agent then requested a face to face interview with Gerritsen. Shortly thereafter the phone line went dead. Subsequent attempts to reach Gerritsen over the phone resulted in busy signals.

5. On October 29, 2004, at approximately 4:38 PM, Los Angeles agents returned to Gerritsen's residence. Using mobile direction finding techniques, the agents located the source of a signal on 147.8117 MHz, which identified as "KG6IRO," to Gerritsen's residence at 6217 ½ Palm Avenue, Bell, California. As the agents approached the front door to Gerritsen's residence they heard a male voice coming from inside the residence which synchronized with the voice heard on the agents' handheld scanner tuned to 147.810 MHz. The voice was familiar to the agents as Gerritsen's voice. No one answered the door. The agents requested information concerning Gerritsen's involvement in a Coast Guard rescue earlier that day, and requested an inspection and an interview. There was no response to the requests.

6. On November 3, 2004, the Commission's Los Angeles Office received information from the President of CARA, who reported that he had monitored and recorded the communications between Gerritsen and the Coast Guard Auxiliary Officer on October 29, 2004. The recording reveals that for approximately 40 minutes, Gerritsen is speaking and playing a recorded message while the Officer and the complainant urge him to cease transmissions and vacate the frequency because of the emergency.

⁵During the emergency communications, the Officer identified himself as "W1HIJ" and "U.S. Coast Guard Auxiliary Upland Radio One." The complainant identified herself as "N6LNX." According to Commission records, both are authorized amateur licensees.

III. DISCUSSION

7. Section 503(b) of the Act provides that any person who willfully or repeatedly fails to comply substantially with the terms and conditions of any license, or willfully or repeatedly fails to comply with any of the provisions of the Act or of any rule, regulation or order issued by the Commission thereunder, shall be liable for a forfeiture penalty. The term "willful" as used in Section 503(b) has been interpreted to mean simply that the acts or omissions are committed knowingly.⁶

8. Section 333 of the Act states that no person shall willfully or maliciously interfere with, or cause interference to, any radio communications of any station licensed or authorized by or under this Act or operated by the United States Government. The legislative history for Section 333 identifies willful and malicious interference as "intentional jamming, deliberate transmission on top of the transmissions of authorized users already using specific frequencies in order to obstruct their communications, repeated interruptions, and the use and transmission of whistles, tapes, records, or other types of noisemaking devices to interfere with the communications or radio signals of other stations."⁷ One hallmark of willful and malicious interference in the Amateur Radio Service is the refusal by an operator to allow any other operator to talk.⁸

9. Section 321(b) of the Act states that "[a]ll radio stations, including Government stations and stations on board foreign vessels when within the territorial waters of the United States, shall give absolute priority to radio communications or signals relating to ships in distress; shall cease all sending on frequencies which will interfere with hearing a radio communication or signal of distress, and, except when engaged in answering or aiding the ship in distress, shall refrain from sending any radio communications or signals until there is assurance that no interference will be caused with the radio communications or signals relating thereto, and shall assist the vessel in distress, so far as possible, by complying with its instructions."⁹ Section 97.101(c) of the Commission's Rules, concerning amateur operations, states that "[a]t all times and on all frequencies, each control operator must give propriety to stations providing emergency communications"¹⁰

10. On October 29, 2004, a Coast Guard Auxiliary Officer attempted to contact a damaged vessel in distress near Catalina Island. Because the VHF marine radio on the damaged vessel was inoperable, the Officer used the CARA Repeater to contact the vessel and asked all stations to stand by during his emergency communications, consistent with Section 321(b) of the Act. Shortly after the emergency communications began, Gerritsen, clearly identifying himself by his cancelled call sign of "KG6IRO," began transmitting on the CARA Repeater input frequency. Although the frequency had been cleared for emergency communications, Gerritsen refused to clear the channel, and refused to cease transmitting, obstructing the communications of the authorized users during the emergency. His refusal to clear the frequency, and his continual use of the frequency during the emergency, interfered with the Coast Guard Auxiliary Officer's ability to hear radio communications from the ship in distress. The Officer and the complainant both repeatedly asked Gerritsen to vacate the frequency, so that it could be used to locate the complainant's husband at sea. Gerritsen refused.

⁶Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies to violations for which forfeitures are assessed under Section 503(b) of the Act, provides that "[t]he term 'willful', when used with reference to the commission or omission of any act, means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act or any rule or regulation of the Commission authorized by this Act...." See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991).

⁷H.R. Rep. No. 101-316, at 13 (1989).

⁸*U.S. v. Richard*, (1998 WL 830654 (E.D. La.)). See also *John B. Genovese*, 10 FCC Rcd 7594 (CIB 1995).

⁹47 U.S.C. § 321(b). See also 47 C.F.R. § 2.401.

¹⁰47 C.F.R. § 97.101(a).

11. Gerritsen currently holds no Commission license or authorization to operate on any amateur frequency and, in the past year, Commission agents have warned Gerritsen that he holds no valid authorization to operate on amateur frequencies. However, Gerritsen continues to operate on amateur frequencies and, on October 29, 2004, apparently willfully and maliciously interfered with communications relating to a ship in distress. The requirement of Section 321(b) that all radio stations “shall give absolute priority to radio communications or signals relating to ships in distress . . . and shall assist the vessel in distress, so far as possible” exemplifies one of the best uses for radio transmissions, the endeavor to save a human life. Gerritsen’s actions on October 29, 2004, however, exemplify the worst. Gerritsen was repeatedly warned during his transmissions that he was interfering with emergency communications relating to a vessel in distress. He nonetheless continued to transmit, announcing, at the end of the emergency, that he would jam anyone who would jam him. Therefore, his violation is willful. Based on the evidence before us, we find that Gerritsen apparently willfully violated Sections 321(b) and 333 of the Act by willfully and maliciously interfering with the radio communications of a Coast Guard Auxiliary Officer while he attempted to use the amateur frequencies to contact a sailing vessel in distress.

12. Pursuant to *The Commission’s Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, (“*Forfeiture Policy Statement*”), and Section 1.80 of the Rules, the base forfeiture amount for causing interference to licensed stations is \$7,000.¹¹ In assessing the monetary forfeiture amount, we must also take into account the statutory factors set forth in Section 503(b)(2)(D) of the Act, which include the nature, circumstances, extent, and gravity of the violations, and with respect to the violator, the degree of culpability, and history of prior offenses, ability to pay, and other such matters as justice may require.¹² Based on the criteria in Section 503(b)(2)(D) of the Act, and the upward adjustment criteria in the *Forfeiture Policy Statement*, we find that an upward adjustment of the base forfeiture amount of \$7,000 is warranted.¹³ Gerritsen’s apparent willful and malicious interference with the radio communications of the Coast Guard Auxiliary Officer, who was attempting to communicate with a ship in distress, is egregious. According to the evidence, Gerritsen knowingly operates, without a license, radio transmission equipment. On October 29, 2004, his unauthorized operations interfered with emergency communications related to aiding a ship in distress. Gerritsen continued to transmit on a frequency that had been cleared for emergency communications, despite repeated warnings and requests to vacate the frequency. Considering the entire record and applying the factors listed above, we conclude that Gerritsen is apparently liable for a forfeiture in the amount of \$21,000.

IV. ORDERING CLAUSES

13. Accordingly, IT IS ORDERED that, pursuant to Section 503(b) of the Communications Act of 1934, as amended, and Sections 0.111, 0.311 and 1.80 of the Commission's Rules, Jack Gerritsen is hereby NOTIFIED of this APPARENT LIABILITY FOR A FORFEITURE in the amount of twenty-one thousand dollars (\$21,000) for violations of Sections 321(b) and 333 of the Act.¹⁴

14. IT IS FURTHER ORDERED that, pursuant to Section 1.80 of the Commission's Rules within thirty days of the release date of this Notice of Apparent Liability for Forfeiture, Jack Gerritsen SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

¹¹12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999); 47 C.F.R. §1.80.

¹²47 U.S.C. § 503(b)(2)(D).

¹³47 U.S.C. § 503(b)(2)(D); 47 C.F.R. § 1.80(b)(4); *see also Forfeiture Policy Statement*, 12 FCC Rcd at 17100 – 01.

¹⁴47 U.S.C. §§ 321(b), 333, 503(b), 47 C.F.R. §§ 0.111, 0.311, 1.80.

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15. Payment of the forfeiture must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the NAL/Acct. No. and FRN No. referenced above. Payment by check or money order may be mailed to Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. Payment by overnight mail may be sent to Bank One/LB 73482, 525 West Monroe, 8th Floor Mailroom, Chicago, IL 60661. Payment by wire transfer may be made to ABA Number 071000013, receiving bank Bank One, and account number 1165259.

16. The response, if any, must be mailed to Federal Communications Commission, Enforcement Bureau, Western Region, Los Angeles Office, 18000 Studebaker Rd, Suite 660, Cerritos, CA, 90703 and must include the NAL/Acct. No. referenced in the caption.

17. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices ("GAAP"); or (3) some other reliable and objective documentation that accurately reflects the petitioner's current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

20. Requests for payment of the full amount of this Notice of Apparent Liability for Forfeiture under an installment plan should be sent to: Chief, Revenue and Receivables Operations Group, 445 12th Street, S.W., Washington, D.C. 20554.¹⁵

21. IT IS FURTHER ORDERED that a copy of this Notice of Apparent Liability for Forfeiture shall be sent by Certified Mail, Return Receipt Requested, and regular mail, to Jack Gerritsen, 6217 ½ Palm Avenue, Bell, CA, 90201.

FEDERAL COMMUNICATIONS COMMISSION

Catherine Deaton
District Director
Los Angeles District Office
Western Region
Enforcement Bureau

¹⁵See 47 C.F.R. § 1.1914.